

**Definitive Map Review 2010 – 2011
Parish of Holbeton**

Report of the Executive Director of Environment, Economy and Culture

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that a Modification Order be made to modify the Definitive Map and Statement by adding a restricted byway in respect of Suggestion 1 between points A and B as shown on drawing no. EEC/PROW/10/94.

1. Summary

The report examines the Definitive Map Review in the Parish of Holbeton in the District of South Hams, including a Schedule 14 application made by the Trail Riders Fellowship for the addition of a byway open to all traffic from the county road near Pool Mill Farm to the county road near Henna Mill.

2. Background

The original survey under s. 27 of the National Parks and Access to the Countryside Act 1949 revealed five footpaths and three bridleways in Holbeton, which were recorded on the Definitive Map and Statement with a relevant date of 11 October 1954.

The review of the Definitive Map, under s. 33 of the 1949 Act, which commenced in the 1970s but was never completed, produced one valid proposal for change to the Definitive Map at that time, namely the addition of a bridleway from Pool Mill to Henna Mill, which is discussed in this report.

The Limited Special Review of RUPPs, carried out in the 1970s, did not affect the parish.

The following Agreements and Orders have been made:

Plympton St Mary Creation Agreement 1966 in respect of Footpath No. 13

South Hams District Council Creation Agreement 1977 in respect of Footpath Nos. 11 and 12

Devon County Council Creation Agreement 1981 in respect of Footpath No. 14

Magistrates Court Stopping-up Order 1981 in respect of part of Footpath No. 13

Devon County Council (Footpath No. 6, Holbeton) Public Path Diversion Order 2007

Devon County Council (Bridleway No. 1, Holbeton) Public Path Diversion Order 2010

Legal Event Modification Orders will be made for these amendments in due course.

3. Review

The current Review began in July 2010 with a public meeting held in the parish hall. It picks up a claim for the addition of a route, first claimed by Holbeton Parish Council as a bridleway in 1978, during an earlier review, and then, in 2005 as the subject of a Schedule 14 application for a byway open to all traffic made by the Trail Riders Fellowship. No additional claims or suggestions for modifying the Definitive Map were put forward following the parish meeting.

A full public consultation on the claimed byway was carried out in October 2010 and advertised on parish notice boards, and in the Ivybridge Gazette. The claim is discussed in the appendix to this report.

The responses were:

County Councillor William Mumford	-	no comment
South Hams District Council	-	no comment
Holbeton Parish Council	-	support the proposal
British Horse Society	-	no comment
Byways and Bridleways Trust	-	no comment
Devon Green Lanes Group	-	no comment
Country Landowners' Association	-	no comment
National Farmers' Union	-	no comment
Open Spaces Society	-	no comment
Ramblers	-	support restricted byway status
Trail Riders' Fellowship	-	no comment – s.14 applicant for BOAT status

4. Conclusion

It is recommended that an Order be made to add a Restricted Byway from the minor county road near Pool Mill Farm to the minor county road near Henna Mill.

Should any further valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

5. Financial Considerations

There are no implications.

6. Sustainability Considerations

There are no implications.

7. Carbon Impact Considerations

There are no implications.

8. Equality Considerations

There are no implications.

9. Legal Considerations

The implications/consequences of the recommendation have been taken into account in the preparing of the report.

10. Risk Management Considerations

There are no implications.

11. Reasons for Recommendation/Alternate Options Considered

To progress the parish by parish review of the Definitive Map in the South Hams district area.

Chris McCarthy

Electoral Division: Yealmpton

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence File	2010 to date	DMR/Holbeton

hc010211pra
sc/cr/Holbeton dmr
03 hq 140211

Background

A. Basis of Claims

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under WCA 1981 Schedule 14.

Common Law presumes that at some time in the past the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

The Highways Act 1980, Section 32 states that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan, or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Wildlife and Countryside Act 1981, Section 53[3] [c] enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows:

(i) that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The Wildlife and Countryside Act 1981, Section 56[1] states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein but without prejudice to any question whether the public had at that date any right of way other than those rights.

Suggestion 1: Schedule 14 Application for Addition of a Byway Open to All Traffic

Addition of a byway open to all traffic from the minor county road near Pool Mill Farm to the minor county road near Henna Mill, as shown on drawing no. EEC/PROW/10/94.

Recommendation: It is recommended that a Modification Order be made in respect of Suggestion 1 to record a restricted byway between points A – B as shown on drawing no. EEC/PROW/10/94.

1. Background

The schedule 14 application was made by the Trail Riders Fellowship on 14 November 2005, triggered by the impending Natural Environment and Rural Communities Act 2006. Previously, the same route had been claimed as a bridleway by Holbeton Parish Council in 1978 during an earlier, uncompleted review of the Definitive Map.

2. Description of the Route

The route runs from point A, at the minor county road near Pool Mill Farm, for nearly 1.2 kilometres along a defined lane along the edge of woodland to meet the minor county road at point B, at a cross roads near Henna Mill. The lane is bounded by hedge banks on the southern side and on the northern side by trees and an iron fence, which bounds the Gnaton Hall Estate and which, for the most part, also forms the parish boundary with Newton & Noss. The width between fence and bank varies between 4 and 5 metres. The route has a stone and earth surface.

3. Documentary Evidence

3.1 Greenwood's Map, 1827

Greenwood was a well-known published cartographer of the day. The western end of the route, near Pool Mill, is included on the map as an unenclosed cross-road. At the crossroads near Henna Mill an open junction is shown in the location of the route.

3.2 Ordnance Survey Maps, C18 onwards

The Ordnance Survey mapping does not provide evidence of the status of the route but rather its physical existence over a number of years. The route is shown on the 1784 – 1786 Draft Drawings and all subsequent maps as a continuous through route.

The Draft Drawings show the entire route. It is shown fenced/hedged on both sides apart from approximately 100 metres at the westernmost end, where it is shown unfenced on the northern side.

1st Edition 1 inch to a mile map (Cassini Reproductions Sheet 202 Torbay & South Dartmoor) first published in 1809 and in the 1860s with revisions, also shows the claimed route as bounded on both sides, except for the 100 metres at the western end, which is unfenced to the north. Subsequent OS maps show the route as fenced/hedged on both sides.

Both the 1st Edition 25", published 1895, and 2nd Edition 25", published 1904-1906, show the route with shading on one side. From 1884 to 1912 it was OS mapping convention to mark the first and second class public roads with solid lines, with one side shaded.

From 1885 metalled carriage drives were also to be shaded as second class roads but with the shading less prominent as for public roads. The 2nd edition 25" map shows parts of the carriage drive constructed for Membland Hall in the late 1880s – early 1890s (see paragraph 3.4). These are also shaded, but it is not possible to discern any difference in the shading between these and recorded public roads.

The OS maps do not indicate any gates across the route.

3.3 Holbeton Tithe Map and Apportionment, 1839-42 and

Newton Ferrers Tithe Map and Apportionment, 1839

The tithe maps indicate that at the time the central section of the route was in Newton Ferrers parish with the parish boundary following the southern side of the route. Both ends of the route were in Holbeton parish.

Tithe maps were drawn up under statutory procedures laid down by the Tithe Commutation Act 1836 and subject to local publicity, which would be likely to have limited the possibility of errors. Public roads were not titheable. In the Devon Record Office leaflet on Rights of Ways Records it states under Tithe Maps and Apportionments that where a track is numbered on the map and listed with the holdings of a private individual, it was regarded as of essentially private character. It is possible that the private character referred to maintenance rather than use. Tithe maps do not offer confirmation of the precise nature of the public and/or private rights that existed over the route shown.

None of the roads in Holbeton or Newton Ferrers are coloured. However, in both parishes currently recorded county roads are not apportioned under the landholdings of any individual, whereas private roads/farm tracks are.

In Holbeton, all parish roads are listed under apportionment number 984. This number is annotated on the tithe map at Whitemoor Cross. It can therefore be assumed that unless separately numbered in the apportionments all other roads shown are regarded as parish roads. The claimed route is shown as a defined lane with an open junction to the recorded county road near Henna Mill, and is not separately numbered. At the western end the route appears to be shown as an unenclosed track running along the edges of two narrow arable fields. The fields are numbered 206 and 207 and listed as Lower Part of Higher Grange and Higher Part of Higher Grange respectively belonging to Pendarvis and Hynne. This is not inconsistent with the existence of highway rights. As an unfenced track along field margins its effect on the tithe payable was likely to be negligible.

In Newton Ferrers, the central section of the route is shown as a defined lane and is not numbered under the landholdings of any private individual.

3.4 Membland Hall Estate Documents 1895 – 1915

The land surrounding the claimed route was formerly part of the Membland Hall estate. The estate was purchased by Edward Baring (later 1st Lord Revelstoke) in the 1870s. He had the hall significantly extended and also developed the estate, with the construction of three lodge houses and a private carriage drive alongside the River Yealm and the coastline. Following a financial crisis in the 1890s the estate was sold off. Several documents relating to this and subsequent sales are held in the Plymouth and West Devon Records Office.

The earliest sales particulars dating from 1895 describe the estate as having two carriage drives, with lodge entrances: one from the west leading off the Plymouth Road, of about half a mile in length; the other, 3 miles long, which crosses and for a short distance traverses the main road, from the east off the main road to Ivybridge. The relevant plan is not included with the particulars but from the description the second drive would appear to include the claimed route. Without the plan however it is not possible to clarify whether the claimed route was detailed in the schedule of hereditaments to be included in the sale of the estate.

Sales particulars produced in 1897 for outlying portions of the Membland estate include Alston Farm which bordered the southern side of the claimed route. The route is coloured on the sale plan, as are all other roads, and was not included in the sale particulars.

An Abstract of Title relating to the Membland Hall Estate, produced in 1915 includes an Indenture dated 15 December 1899. These documents state that the sale is *subject (as regards those parts of the road leading from Wonnell Lodge to Membland Hall which were private roads being the parts coloured blue on Plan No. 1) to such rights of way (if any) as then subsisted over the same.*

The claimed route would have been part of the road described leading from Wonnell Lodge to Membland Hall. It is coloured buff on the enclosed plan along with recorded public roads, whereas other sections regarded as private today are coloured blue.

Sales particulars from 1915 also make reference to the private roads coloured blue on Plan No. 1 *which (with certain portions of the parish roads were constructed as an approach from Wonnell Lodge.* Plan No.1 was not included with the sales particulars held in the records office but it can be assumed that it is the same plan enclosed with the 1899 Indenture and 1915 Abstract of Title referred to above. The private roads (and lodge) were included in the sale.

These documents suggest that private roads were constructed to link with existing parish roads to form the carriage drive from Wonnell Lodge (also known as Bull and Bear after the figures on the gate pillars).

Subsequent sales particulars for the estate and adjoining properties, including Gnaton Hall, do not include the claimed route.

3.5 Finance Act 1909-1910

The Finance Act provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale of value. The system for calculating the assessable site value allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to public rights of way. The Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered. So if a route is shown external to any numbered hereditament, there is a strong indication that it was considered a public highway, normally but not necessarily vehicular as footpaths and bridleways were usually dealt with by deductions. However, there may be other reasons to explain its exclusion.

The claimed route is shown entirely excluded from surrounding hereditaments in the same manner as most known public highways today. However, elsewhere on the plan some recorded public roads are shown not excluded.

3.6 Holbeton Parish Council Minutes 1894-1924 & 1962-1994

The Plymouth & West Devon Records Office holds Minute Books for Holbeton Parish Council for the periods 1894-1924 and 1962-1994.

In 1977 and 1978 the Parish Council discussed the proposed review of the definitive map. In December 1977 it was agreed to hold a parish meeting and in the meantime to make arrangements for exhibition to the public of the Footpaths Map. At the February 1978 meeting places where some amendment to the Definitive Map was required were noted and

it was agreed that they would be the subject of further discussion at the parish meeting. It was decided to hold a special parish meeting to discuss the Definitive Map on either the 4th or 18th April 1978. No minutes or notes are available for the meeting but the Parish Council subsequently submitted their proposal for the addition of a bridleway from Pool Mill to Henna Mill as discussed in paragraph 4.7 below. The family of one of the Parish Councillors at the time, Mrs Sayers, owned land adjoining the route.

At the meeting of 8 June 1982 it was noted that two bridleways had not been included on the map by DCC, one of these being Henna Mill to Pool Mill. (The other is recorded as Bridleway No. 2).

10 November 1992 The Chairman reported that Hennamill/Pool Mill "Green Lane" had been discussed at a recent meeting with Area Engineer DCC and that Newton & Noss Parish Council had raised possibility of establishing a Right of Way. The chairman reported that general feeling expressed at the meeting that 'leave well alone' was the best policy and that Mr Sayers thought the pathway was an Unclassified County Road. It was agreed that Newton & Noss be informed the matter was under consideration while attempts to establish ownership were undertaken. The chairman said he would approach Mr Lopes and Mr Northmore as they owned adjacent land.

8 December 1992 Hennamill/Pool Mill Farm "Green Lane" – the chairman reported that he had been in contact with Mr Lopes, Mr Northmore and Mr Sayers as intended and also in contact with Mr Pain at Membland but that ownership of the 'Green Lane' had not become apparent. The matter would be discussed with Newton & Noss Parish Councillor and that following on from this a decision would be taken to either a) recommend to Newton & Noss Parish Council to 'Leave well alone' as new signposts could attract undesirable use or that b) Request that SHDC downgrade the lane to 'Bridleway' status.

12 January 1993 Hennamill/Pool Mill Farm "Way" – County Councillor Hart confirmed the "Way" was not recorded on the Definitive Plan held by the County Council. Although proposed that the "Way" be established as 'Bridleway' so as to restrict its potential use it was agreed to discuss the matter further when more members were present. In the meantime it was hoped sale documents of the Revelstoke Estate might shed more light on the ownership of the strip of land.

9 February 1993 Hennamill/Pool Mill Farm "Way" – Reported that examination of the Revelstoke Estate Deeds of 1915 had been inconclusive on ownership of the relevant strip of land. After discussion it was unanimously agreed that the Clerk should write to the Newton & Noss Clerk recommending that 'Leave well alone' was considered to be the best policy as establishment of a formal status of the strip of land was likely to draw attention to it and possibly attract use which could well be undesirable.

3.7 General Review of the Definitive Map 1975

Holbeton Parish Council submitted one proposed amendment of the Definitive Map, namely the addition of a Bridleway from Pool Mill to Henna Mill. The form was signed by the Clerk of the Parish Council and dated 10 July 1978. The accompanying proposal form described the route as a hard-bottomed track running from the unclassified county road near Pool Mill at GR 579 485 to the unclassified county road near Henna Mill at GR 590 490.

Three user evidence forms accompanied the proposal. It was also stated that additional evidence that this path is a right of way has been sought from the 1910 Agricultural Finance Act, which treated the lane as a public road.

4. User Evidence

User evidence forms from three people were submitted in 1978 in support of Holbeton Parish Council's proposal for the addition of a public bridleway over the claimed route. A further ten user evidence forms were submitted by the Trail Riders Fellowship in 2005 in support of their application for a byway open to all traffic, and another twenty-four forms submitted during the course of the parish review, including one from a user who had previously completed a form in 1978. Three forms were completed by people who own or have an interest in adjoining land. Their evidence is therefore not included in this analysis and is considered in the Landowner Evidence (paragraph 5) instead. Therefore, in total, this report considers user evidence from thirty-three individuals.

The earliest use dates back to 1960 but most use covers the period from the 1980s onwards. Use has been on foot, horseback, bicycle and by motor vehicle with most users believing it to be either a restricted byway or a byway open to all traffic. Frequency of use varies from once or twice a year to weekly or more.

None of the users report ever having seen gates or notices on the route. No users sought permission to use the route, nor were they stopped or turned back.

Four users report having led, or taken part in, walking groups along the route. Mr John Howard states that he jointly led a party of walkers from the South Hams Group of the Ramblers Association in June 1982 and again in subsequent years, and that it was publicised in the Groups Walks programme. Mr Mike Torrens is the representative for the South Hams Ramblers and, in addition to individual use of the route with his wife and family since 1998, has led Ramblers' South Hams Group Walks since 2005. He includes extracts of the Ramblers Group Walk database with his evidence form and states that there are usually 15-25 people on group walks. He and his wife also led a group of about 15 people from the Long Distance Walkers' Association in 2003. Miss Janice Went also states that she has led groups of Ramblers, Torbay Rambling Club and Long Distance Walking Association. Mrs Hicks has used the route on her own or with family members, including with her children on horseback, since 1985 but has also taken part in Ramblers Group walks since 2000. She has included extracts of the walk programmes with her evidence.

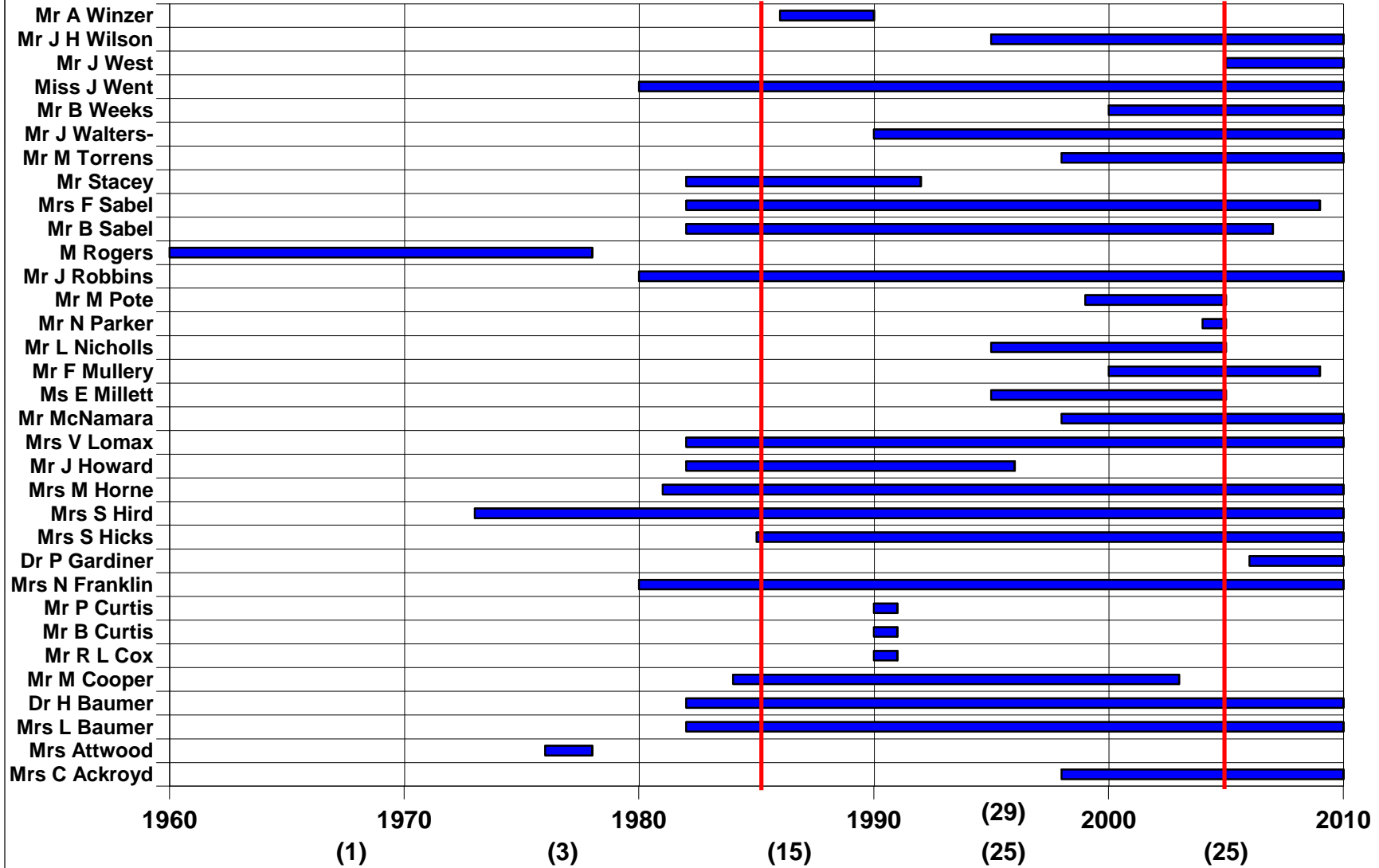
Several users comment that in more recent winters the route has been impassable, with the central section being flooded or muddy due to poor surface water drainage.

From the user evidence there does not appear to have been any event prior to making the application which had the effect of challenging public use of the paths. In the absence of such an event the application itself is to be considered as calling into question the public's right to use the claimed paths for the purposes of deemed dedication under the Highways Act 1980, the date of 'calling into question' being the application date of November 2005 (Section 31, 7A and 7B of the Highways Act 1980 as inserted by the Natural Environment and Rural Communities Act 2006). The relevant twenty year period is therefore 1985 to 2005.

Chart of User Evidence

20 years prior

Date of calling into question



5. Landowner Evidence

The land crossed by the route is not registered with the District Land Registry. Adjoining landowners were therefore contacted for their views/evidence.

Gnaton Hall

Most of the land adjoining to the north of the route is part of the Gnaton Hall Estate. The estate's ring fence bounds the route and also forms the Holbeton-Newton & Noss parish boundary. George Lopes of Gnaton Hall completed a Landowner Evidence Form in response to the consultation and an accompanying letter, which is discussed further below. He has owned the adjoining fields, originally part of the Membland Hall Estate, for 34 years. He does not believe the way to be public but is aware that it has been used by members of the public by horseback and on foot. He has not required people to use permission before using the way but has tried to block it on shoot days and states that he, or someone on his behalf, has turned people back on those occasions. He also states that he has told people it was not public, but only if they were a nuisance. He states that he has obstructed it with 4x4 vehicles or a tractor on shoot days or when dealing with timber extraction or agricultural access.

Sayers Farms

Geoffrey Sayers owns an area of woodland to the south of the route. He has also submitted a Landowner Evidence Form and letter. He has owned the land for 21 years, since inheriting from his parents. He does not believe the route to be public but has seen occasional walkers and riders. He states that people have asked his permission and that he has stopped or turned people back and obstructed the route with rope or vehicles on shoot days or when extracting timber or doing agricultural operations. He has occasionally told uncooperative walkers that the route was not public and when he came across a 4x4 vehicle on the track. He states that he has erected signs on shoot days.

Mr Sayers' mother, Mrs S P Sayers and sisters Catherine Sayers and Mrs A C Carrick have completed User Evidence Forms in respect of their use of the route. However, as they or their family own adjoining land they have a private right to use the route. They state that they believe the route to be a footpath or bridleway but that they never imagined it was public. They state that access was only restricted on shoot days or for timber/agricultural work. They add that their family have maintained the route, carrying out clearance or drainage works. Catherine Sayers, has also completed Landowner Evidence Form. She also owns land to the west but not adjoining the route.

Both Mr Lopes and Mr Sayers have sent additional information in identical accompanying letters, which are available in full in the backing papers. Mr Lopes and Mr Sayers state the legal presumption that they and their neighbours own the route up to the centre and have closed it as and when they have wished over a number of years as per their evidence forms. They therefore do not believe that a public right of way has been dedicated or used as of right for 20 years and object to the claim. They are aware however that the route might be a welcome adjunct to public paths in the vicinity and have indicated that they might consider entering into a creation agreement to dedicate a bridleway, but on the basis that they can close the route on shoot days and on other terms to be agreed. However, the County Council has a statutory duty to determine the claim for an existing public right of way over the route and does not have powers to make a creation agreement on such terms. Clear title to the land would also need to be shown.

Alston Manor Farm

Colin Northmore of Alston Manor Farm owns adjoining land to the south and at either end of the route (either side of Mr Sayers' land). He states that he does not believe the route to be public but that he has seen or is aware of members of the public using it on horseback. He

has never required people to ask permission or told them it was not public, but has stopped people and obstructed the route when moving cattle.

6. Other Correspondence

Newton and Noss Parish Council was consulted on the proposal as the route abuts the parish boundary. They support the proposed modification of the Definitive Map.

Email correspondence has been received from nearby residents in response to the consultation. Two object to the route being recorded a byway open to all traffic but have no objection to restricted byway status. There is also one objection to any public status on the basis of increased maintenance and suitability for walkers due to nearby game shoots. These are not factors that can be taken into consideration however.

7. Discussion

Presumption of dedication under section 31 of the Highways Act 1980

The user evidence forms submitted demonstrate that the route has been well used, as of right, by the public for the full twenty year period. The majority of use extends from the early 1980s although the earliest recorded use is from 1960. Use was on foot, horseback, bicycle and motor vehicle, used for recreation. Evidence also shows that the use is not limited to those who completed evidence forms. Several participated in organised walks with the Ramblers, and other walking groups, of 15-20 at a time. Similarly, it was used by groups of trail riders. Some mention seeing or meeting other people using the route, or of walking or riding with family members. The landowners also refer to seeing walkers or horse riders.

Section 31 of the 1980 Act requires not only use as of right for a period of at least twenty years prior to the date of calling into question, but also that use during that period was without interruption. An interruption in use must be some physical and actual interruption for the purpose of preventing enjoyment of the path or way. The reasons for any interruption are therefore relevant. The adjoining landowners state that on shoot days they have blocked the route with vehicles, rope or stationed personnel along it to restrict access. Whilst access to the route would therefore have been restricted on days when the shoot was present, the shoot would not permanently deprive the public of access to the route. It could also be interpreted as an acknowledgement by the landowners that some members of the public were likely to be using the route and that restricting access was to ensure the safety of the public and those taking part in the shoot.

Similarly, any possible interruptions to use as a result of timber extraction, the movement of cattle or due to the route being impassable through winter periods, would not constitute relevant interruption as they were not due to the landowners trying to prevent public enjoyment of the way and would have been of a temporary nature.

The evidence therefore demonstrates use as of right and without interruption for a period of twenty years, between 1985 and 2005, to raise the presumption of dedication. It is then necessary to consider whether any landowner has demonstrated a lack of intention to dedicate the way. For there to be sufficient evidence that there was no intention to dedicate the way there must be evidence of some overt acts on the part of the landowner, during the relevant period, such as to show the public at large, the public who used the path, that he had no intention to dedicate. The test is whether a reasonable user would have understood that the owner was intending to disabuse the user of the notion that the way was public. It is not necessary to demonstrate a lack of intention throughout the relevant period but where that evidence is for a short period of time then questions of whether this is sufficient arise.

Mr Lopes states that he has stopped or turned people back on shoot days but only told people the route was not public if they were being a nuisance. Similarly, on such occasions Mr Sayers states that he has told uncooperative walkers that the route was not public, and also the driver of a 4x4 he came across. Mr Sayers also says that he has put notices on the route on shoot days.

As previously discussed, temporary closures of the route on shoot days do not constitute an effective interruption and, by the same reasoning such closures, and any notices to that effect, do not demonstrate a lack of intention to dedicate.

With regards to people being stopped or told that the way was not public, there is no corroborative evidence of this from users. Whilst there is no reason to doubt that Mr Lopes or Mr Sayers, or someone on their behalf, may have stopped or told some people when shooting was taking place, they acknowledge that the number of shoot days are small and occur during a relatively short period during the winter months, when users comment that the route is also often impassable due to mud or flooding. It is therefore likely that very few people would have been using the route on those occasions, and not those who have completed evidence forms. There is therefore insufficient evidence to demonstrate a lack of intention to dedicate.

Public use of the route has been mainly on foot, horseback and bicycle but there has also been use with motor vehicles. This level of use would have been capable of meeting the definition of a byway open to all traffic, as claimed by the Trail Riders Fellowship. However the claim does not satisfy any of the exceptions listed under Section 67 of the Natural Environment and Rural Communities Act 2006 and, therefore, the highest status that can be considered is a restricted byway.

Dedication at Common Law

All of the user evidence can also be considered in relation to common law, in conjunction with mapping and documentary evidence.

Mapping evidence shows that the claimed route has physically existed as a defined route since at least 1784. The Tithe Maps for Holbeton and Newton Ferrers suggest that the route was considered a parish road in the mid 19th century. They also demonstrate that the route pre-dates the construction of Lord Revelstoke's carriage drive. This, together with the evidence from Membland Hall Estate documents, indicates that the route was an existing parish road, which linked with other sections of parish road and newly constructed private roads to form the carriage drive from Wonnell Lodge to Membland Hall. There is no evidence that existing public rights over the parish roads were stopped-up.

Holbeton Parish Council claimed the route as a public bridleway in the 1978 review. Their claim was based on use by the public and exclusion of the route from the Finance Act valuation, which they believe treated it as a public road. Its omission from the Definitive Map as a bridleway was again brought up in 1982. When the route was later raised in 1992-1993, the parish council were still of the opinion that it was public, with possibly higher rights than that of bridleway. Although the parish council decided to take no further action in getting it formally recorded, this was only out of concern that signing it would attract undesirable use, and not because they considered it to be private.

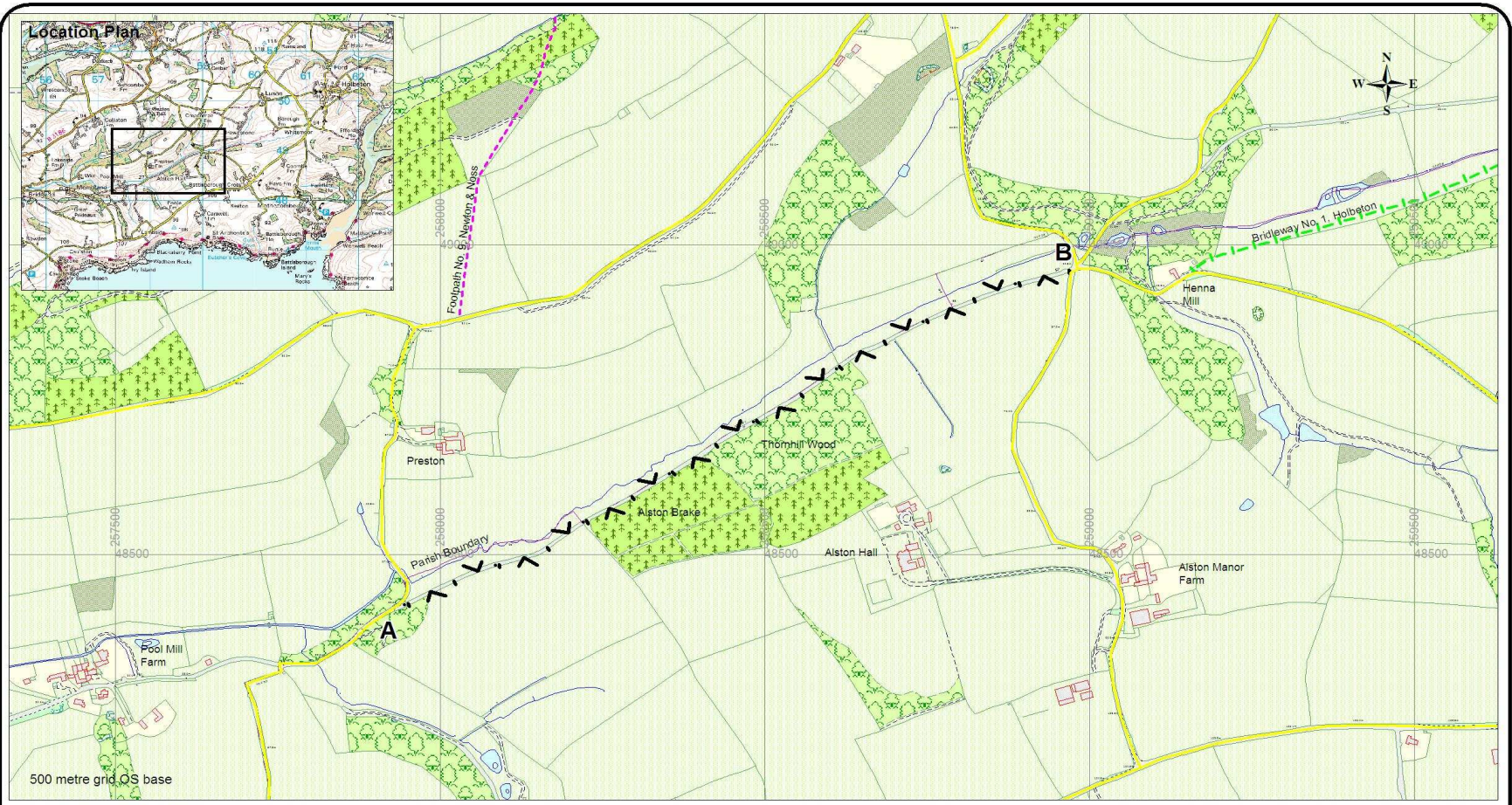
Parish minutes also show that the adjoining landowners would likely have been aware of the parish council's claim in 1978, and again of the discussion in the 1990s, when Mr Sayers is quoted as saying he believed it was an unclassified county road.

User evidence suggests that the route has long been considered a bridleway or byway. It is clear that the route has been documented as a through route for over 200 years and during

that time has been used extensively. The public have used the route consistently for the past forty years on foot, horse, bicycle and with vehicles, and very likely for much longer. There has been no overt action to prevent the public for using the route in this way for recreational purposes. Holbeton Parish Council has consistently regarded it as public during that time and support its addition to the Definitive Map.

8. Conclusion

From evaluation of all the available evidence, under both statute and common law, it is considered that a public right of way not presently shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist. In line with the provisions of the NERC Act 2006, it is therefore recommended that an Order be made to add the route between points A - B, as shown on the plan EEC/PROW/10/94, to the Definitive Map and Statement as a restricted byway.



map ref: SX 5794 - 4901

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DEFINITIVE MAP REVIEW: PARISH OF HOLBETON
SUGGESTION 1: CLAIMED BYWAY OPEN TO ALL TRAFFIC FROM MINOR COUNTY ROAD
NEAR POOL MILL FARM TO MINOR COUNTY ROAD NEAR HENNA MILL

drawing number EEC/PROW/10/94
 date Oct 2010
 scale 1:6,000 (at A3 only)
 drawn by HFC

Notation

Existing footpaths - - - - - Existing bridleways - - - - -
 Claimed byway A-B 1,185 metres approx

To be added



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